

ARIZONA STATE VETERINARY MEDICAL EXAMINING BOARD  
1740 W. ADAMS ST., SUITE 4600, PHOENIX, ARIZONA 85007  
PHONE (602) 364-1PET (1738) FAX (602) 364-1039  
VETBOARD.AZ.GOV

**COMPLAINT INVESTIGATION FORM**

If there is an issue with more than one veterinarian please file a  
separate Complaint Investigation Form for each veterinarian

PLEASE PRINT OR TYPE

**FOR OFFICE USE ONLY**

Date Received: Sept. 12, 2018 Case Number: 19-21

**A. THIS COMPLAINT IS FILED AGAINST THE FOLLOWING:**

Name of Veterinarian/CVT: Jason Eberhardt D.V.M. M.S. DACVIM  
Premise Name: Midwestern University Companion Animal Clinic  
Premise Address: 5715 W. Utopia Road  
City: Glendale State: AZ Zip Code: 85308  
Telephone: (623) 806-7387

**B. INFORMATION REGARDING THE INDIVIDUAL FILING COMPLAINT\*:**

Name: Maria Falcon & family  
Address: [REDACTED]  
City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]  
Home Telephone: [REDACTED] Cell Telephone: [REDACTED]

\*STATE LAW REQUIRES WE HAVE TO DISCLOSE YOUR NAME UNLESS WE CAN SHOW THAT DISCLOSURE WILL RESULT IN SUBSTANTIAL HARM TO YOU, SOMEONE ELSE OR THE PUBLIC PER A.R.S. § 41-1010. IF YOU HAVE REASON TO BELIEVE THAT SUBSTANTIAL HARM WILL RESULT IN DISCLOSURE OF YOUR NAME PLEASE PROVIDE COPIES OF RESTRAINING ORDERS OR OTHER DOCUMENTATION.

**C. PATIENT INFORMATION (1):**

Name: Titus Falcon  
Breed/Species: Yorkshire Terrier  
Age: 12/13 Sex: Male Color: Silver / Tan

**PATIENT INFORMATION (2):**

Name: \_\_\_\_\_  
Breed/Species: \_\_\_\_\_  
Age: \_\_\_\_\_ Sex: \_\_\_\_\_ Color: \_\_\_\_\_

**D. VETERINARIANS WHO HAVE PROVIDED CARE TO THIS PET FOR THIS ISSUE:**

Please provide the name, address and phone number for each veterinarian.

Dr. Kara Thomas, D.V.M., CVMA - 5715 W. Utopia Rd.  
Glendale, AZ 85308 (623) 806-7387  
Dr. Jason Evans, D.V.M., MS., DACVIM - 5715 W. Utopia Rd.  
Glendale, AZ 85308 (623) 806-7387  
Dr. Patricia Bennett, D.V.M. - 5715 W. Utopia Rd. Glendale, AZ 85308 (623) 806-7387

**E. WITNESS INFORMATION:**

Please provide the name, address and phone number of each witness that has direct knowledge regarding this case.

Maria Falcon	↓	"	[Redacted]
Stan Falcon	↓	"	[Redacted]
Alicia Falcon	↓	"	[Redacted]
Sean Falcon	↓	"	[Redacted]

**Attestation of Person Requesting Investigation**

By signing this form, I declare that the information contained herein is true and accurate to the best of my knowledge. Further, I authorize the release of any and all medical records or information necessary to complete the investigation of this case.

Signature: \_\_\_\_\_

Maria A. Falcon

Date: \_\_\_\_\_

Aug. 31st, 2018

**F. ALLEGATIONS and/or CONCERNS:**

Please provide all information that you feel is relevant to the complaint. This portion must be either typewritten or clearly printed in ink.

Please see the attached documents.

Along with my husband and daughter, I spoke with Dr. Gartrell and Dr. Patterson (both assistant deans of Midwestern University Companion Animal Clinic) on Friday, August 10th. We relayed the events to the both of them, and after an hour and a half, they told us they would further inquire into the events that were still unexplained, but challenged us to come up with a solution to resolve the matter. Both Dr. Gartrell and Dr. Patterson agreed that there were gross and inappropriate managing of our Titus' care and lack of accountability for the lapse in time when he was left alone, caged. My daughter explained that the school should be held accountable and all staff involved should be met with strict disciplinary action. My husband asked what our next steps were if we can't get this resolved and suggested we may involve our attorney. Dr. Gartrell stopped us, and she said that because she is an attorney, our case would not be strong enough that we would be wasting our time and money. I let both Dr. Gartrell and Dr. Patterson know that when I say my prayers everyday, I ask my Titus for forgiveness for ever taking him there that day. I know if I would not have taken him that day, he would still be with us. They were hesitant to propose any real solution at that juncture and we agreed to speak again after they finished their investigation. That following Wednesday, on August 15th, we sent a followup email requesting that questions that were not answered be answered and documented. We did not hear back and so I called the following day to ensure my email was received, and Dr. Gartrell's assistant Alan explained that he would notify Dr. Gartrell. Again, I followed up on the 23rd of August, and her assistant Alan stated that he would have her call me back, which she did. She apologized for not addressing the questions in the emails as she felt they were already addressed in our face-to-face meeting - but they were not. We set up a phone date for Monday the 27th of August, and I expected that the questions on our email would be documented by that date. On Monday the 27th of August, Dr. Gartrell, Dr. Patterson, my daughter and I spoke again and have not heard from them since. We requested again that the questions be documented, along with statements from each party involved, including staff, director and students. Dr. Gartrell and Dr. Patterson explained that since weeks had passed, their statements may not be accurate because it is only human to forget bits and pieces. We explained that this really isn't an excuse because these statements should have been taken early on, when we first brought this to Dr. Eberhardt's attention. My daughter asked what they planned on doing to resolve this issue, and Dr. Gartrell offered to reimburse us all fees from the aspiration on since we were "dissatisfied with the service." My daughter went on to say that this was not like taking a vehicle in to have its brakes checked, it isn't a matter of being dissatisfied with service, a member of our family died, because they were negligent with their care. Dr. Gartrell said that no one would be fired, that this would go on to live as a learning example and the student involved would be spoken to. We said that this is unacceptable which she countered that she really needed to remove herself as nothing would bring back our dog. We said that we still wanted the statements from the parties involved and for her to document her responses to our questions and she agreed and said that she would provide that to us. We have not yet heard back and it has been radio silence since.



I would like for the board to know that on the day of June 19th, 2018, when I brought my dog, Titus, to Midwestern University's Animal Clinic, he was walking, eating, and functioning normally. I brought Titus in for an evaluation because his gland appeared swollen. Two weeks prior to this, Titus had his teeth cleaned and 15 extracted. I explained that Clavamox seemed to reduce the swelling in this gland in the past. The student and technician stated to my husband and me, that per the veterinarian, they would not prescribe any antibiotics, but instead, would follow a treatment plan that would: 1) Test for Valley Fever and 2) Perform an aspiration testing for abnormal cells in the gland. After much hesitation, we agreed to follow the treatment plan as advised by the veterinarian under the assumption that she would perform the tests described. The student and technician explained that these tests would only take moments. Before taking Titus to the area for testing which I or my husband was not allowed to go back to, we made it very clear and emphasized that he was going blind and was hard of hearing. They made acknowledged both of these issues and assured us that they would take extra care of him. After I had tried to acquire his status and check on him multiple times, he was finally given back to me, a completely different animal after three hours. His back legs crossed underneath him and his front legs buckled. I was told he was fine to take home after being seen by the school's students - though, he was not fine and I requested that Dr. Thomas take another look. Dr. Thomas, said "he looks so happy," and I explained that he was not fine and was unable to walk. Dr. Thomas, placed Titus on the examining table and when she saw that he was unable to walk, took him again, to an area where I was not permitted for another hour, to have him further examined. After, being cleared by the neurologist, Dr. Evans, who we never spoke to personally, we waited for Titus in the lobby and when he was handed over to us and almost dropped by the student who's demeanor had changed from caring in the beginning of the examination to now, unnerved and anxious, the student attempted to give us an entirely wrong medication. She offered to show us how to "administer" the syringes of medication and when we questioned the foreign prescription, her confusion became obvious and she took it back from us - bringing us out the Clavamox, which we had initially requested before this transpired. Titus was still not walking by the next morning, and I took him in again with my daughter, only to be told by Dr. Bennett, that he was worn out from the stress from the previous day's events. Per her advice, I let him rest, hoping that his strength would return. The following week, I spoke to Dr. Bennett again and she advised that I bring him in that day to see Dr. Evans. He was examined on the 27th by Dr. Evans. Dr. Evans never spoke to us directly, but gave Dr. Thomas information to relay to my husband and me. Dr. Evans told Dr. Thomas that Titus looked better than he had the previous week and that we may want to schedule an appointment with a cardiologist in the near future. Dr. Thomas recommended that we keep Titus on pain medication. I sat Titus on the ground in front of Dr. Thomas, and again he was unable to walk. Confused, she asked that we try laser therapy on his back legs to stimulate them and/or acupuncture. We agreed to have the laser therapy done, hoping that it would help him. I called Dr. Thomas two times to explain that Titus' health had not improved, with my calls going unreturned. I also called on Friday to speak to the director but was told he would not be there until the following week, that following Tuesday on the 10th of July, our Titus passed.

We approached Dr. Eberhardt to look into the case of our dear dog Titus, on the date of Friday, July 13th. My daughter and I visited Midwestern's Animal Clinic to explain a series of unfortunate and disturbing events which culminated in the passing of our family dog. After a 45 minute retelling of the prior visits, incidents and interactions, Dr. Eberhardt assured us that he would do absolutely everything within his power to procure answers to our questions. We asked if there were cameras with footage we could review and he hesitated, stating at first, "I'm not sure, if there was footage, it wouldn't have been kept that long." We explained that it hadn't been that long at all, only two weeks, and then he replied, "there was definitely not footage and no cameras were back there." We left not knowing if there was footage or not. He asked that we trust him and that his school of animal medicine was upheld by the highest ethical standards, so transparency would be his end goal.

Almost two weeks later, I received a call from the very student who initiated these chain of events on June 19th, to hear her explain that what actually occurred the day in question, was much different than that which was articulated in the examination reports. Her attitude was disingenuous and her apology hollow, and her narrative was disjointed and unclear. I was surprised that she was calling me, instead of Dr. Eberhardt, as this was grossly inappropriate, because this four year student, about to graduate, was ill-prepared with facts and information with respect to the severity of the situation.

Dr. Eberhardt called shortly after and explained that after conducting a thorough investigation with all parties involved, there wouldn't be much he could offer besides his apology. I had him on speaker with my husband, who was there with me during Titus' procedures, and my daughter, who spoke with Dr. Eberhardt herself. We attempted to retain information from his "thorough research" and received a myriad of "I don't know" and "I can't answer that." What we discovered was that Dr. Eberhardt had not fully investigated the appropriate parties involved at all, and could not account for a four hour block of time. This four hour marathon, should have only taken a matter of moments, as Alexis prefaced the aspiration procedure with, "It's a simple aspiration, that only takes 30 seconds." And we knew to account for time taken for his blood work. This gap in time has shown us to be an encounter of neglect and mistreatment. Dr. Eberhardt kept asking, "what more do you want me to do?" and our simple answer was, "give us information about the events that occurred during that day, as a result of you questioning your staff." It appears that the only person he really followed up with was, Alexis, and as her story changed throughout the course of the call, so did his. His attention was divided between the call and something else. When we asked for the dean, Dr. Graves' information he withheld it, stating that Dr. Graves would get back to us, and that he would relay everything to him.

I sent Dr. Graves a detailed account of what transpired, along with a series of questions that our family wanted answered. I followed up the next day to make sure the email was received and was told that Dr. Graves was out of the office. That Monday, Dr. Graves' assistant contacted me, explaining that Dr. Graves would be out for an indefinite amount of time that this matter would go to his assistant dean, Dr. Gartrell who

scheduled an appointment to meet with her that Friday. My daughter, my husband and I met with Dr. Gartrell and Dr. Patterson at the school where we covered Titus history, his appointments and the events leading up to his passing and thereafter. Dr. Gartrell and Dr. Patterson, gave us pieces of information that were not documented in Titus' examination reports. For example, multiple students and a technician attempted the aspiration unsuccessfully before Dr. Thomas attempted the aspiration, where she felt the need to muzzle our dog - a dog who had never shown aggression, who was nearly blind and hard of hearing. During this traumatic marathon, he urinated on the table where they collected his urine sample before collecting blood from him for his Valley Fever test. After this stressful event, he was placed in a cage for hours, while my husband and I waited in the lobby. Dr. Gartrell explained that Dr. Thomas was unaware that Titus had been left back there for as long as he was. Dr. Gartrell and Dr. Patterson explained that their school failed miserably on communication, and that should be remedied through better faculty training and education to not only the students but the staff. Dr. Gartrell and Dr. Patterson continued to say that Titus' case would be handled as a learning example, a teachable moment for "what not to do." After questioning their faculty and students could not explain exactly what happened during the time that Titus was in the area that we were not allowed to visit. We know that because of the immediate change in his physical and mental state, whatever transpired caused his premature death almost three weeks later. We probed Dr. Gartrell and Dr. Patterson with basic questions about accountability, fundamental bedside manner, responsibility, compassion and common sense, and they were unable to account for any of them. They told us that the student would receive a low mark on that specific day of clinicals and the staff would be talked to. Meanwhile, because of Midwestern Animal Clinic's complete mishandling, ineptitude and poor care, our family member, Titus, is no longer with us. A low score on an exam and a slap on the wrist does not make this right. We understand that nothing will bring back our dog, but we think this school, its students, staff and leadership should absolutely be held accountable.

I am requesting that answers be given and Midwestern Animal Clinic's staff be held accountable as this was not just a dog to us, but a member of our family. We loved and cared for this dog deeply and it is almost comical the level of unprofessionalism, maltreatment and disregard we have been shown. We are looking to your board to help us understand the events that transpired on June 19, 2018. We sincerely thank you for your time and consideration.

**Subject:** Please print 3 copies of this.  
**Date:** Thursday, August 9, 2018 at 3:40:25 PM Mountain Standard Time  
**From:** Alicia Falcon  
**To:** Sean Falcon  
**Attachments:** image001.png

### **3/20/18**

Pre-cleaning Exam...after history and exam Titus was cleared for upcoming Dental. On that day they did ear swab and cleaning, nail trim and prescribed us TrizUltra. Invoice 87739c4. I called and asked Dr. Bennett if anesthesiologist could be present based on Titus having Cushings and his age. She would let Dr. Hofmeister know and that it will be an extra charge for that.

### **5/10/18**

Before his cleaning, Dr. Hofmeister said that he would be going in & out and didn't need to be with Titus during the entirety of his oral surgery that took over three and a half hours. When told to come pick Titus up, his breathing was erratic and coughing interrupting normal breaths. Before being discharged, I asked Dr. Bennett what I should do if Titus has difficulty breathing at home, and she then recommended Titus be kept there at hospital overnight. Invoice 6ebcc67

### **5/11/18**

Titus was picked up that morning with just a slight cough and was discharged with Tramadol 50mg #8 to be given 1/2 every 8 to 12 hrs. and Clindamycin 25mg once every 12 hrs. While there, we made a re-check appt. for 5/17/18 to have his dental ckd and also an appt. to see Dr. Carter with Internal Med so that we can put Titus back on track with his Cushings if needed. Invoice 6ebcc67

### **5/17/18**

After Dental evaluation to check post-surgery healing, students stated mouth was fine but that they believed he may have arthritis in his back legs, based purely on examination. Suggested Cosuquin for arthritis and that day I purchased off-site to administer at home. Titus and I then saw Dr. Carter for uncontrolled Cushings (previously had him on Trilostane but at the urging of a Military Vet. was weaned off of it). Dr. Carter suggested that Titus would not need to go back on medication, if we could stand minor incontinence in the house as his body may be better off of the medication. He let me know that he had a dog with Cushings also and at 14 just recently passed. All around a good ck up for Titus and will start him on his Cosuquin now that I was told he may have arthritis. Invoice bc80885

### **6/19/18**

Almost a month after having his teeth cleaned. Titus had a slight swelling on the left side of his throat so I called to make an appt. with either Dr. Carter or Dr. Bennett but was told that Titus would have to wait a while before being seen. I was also told that I could come in and see Dr. Thomas the next day, so not wanting to wait, I made the 130 Appt. and was met by the 2 students that took our history again, one of them being Alexis Kersting. I explained about the swelling going on and didn't know if it had to do with his teeth, and I went on to tell them that in the past the one thing that always seemed to help was Clavamox as it had previously worked in reducing the swelling. But Alexis stated the Clinic will not

normally hand out antibiotics, but instead will want to test for Valley Fever and recommend doing an aspiration to test gland that she stated should not take any longer than 30 seconds with a fine needle. Approval from my husband and I was needed, but inherently, I knew that the Valley Fever test was unnecessary and aspiration would not help. Titus just had blood work done recently for his Dental surgery. I didn't want him to go through having to pull blood out again. Putting our trust in this clinic and agreeing on the procedures on my Titus didn't just take a few minutes but a 4 hour marathon that he had to painfully endure. No one came out to explain what was going on, but when Titus was finally handed to me by Alexis I knew there was something wrong. Not only was the students demeanor entirely different now than when she first took him from me, but when I tried to put him on the ground to walk, he was unable to stand and back legs crossed and buckled. She said that he will get pain meds and his Clavamox. I questioned why he needed pain meds and she said he whimpered when touching his back. I asked to speak with the Vet in charge and said that Dr. Thomas would be in shortly. When Dr. Thomas entered with Alexis, she exclaimed, " Oh he looks so happy," when clearly there was something wrong with him. I asked what happened and how come it took so long. She said it took her a couple of mins to do the aspiration and that it was his salivary gland that was swollen and not LN. There was blood also when aspiration was taken. She then placed him on the table and looked confused to why his legs crossed buckled behind him and front legs now could not straighten underneath him. Dr. Thomas recommended that he be seen by the neurologist, Dr. Evans. Titus was taken to the back once more, after 30 mins. we were told he was fine and ready to go home not by Dr. Thomas nor Dr. Evans, but by Alexis who seemed nervous and flustered handing my dog over to me, almost dropping him. She proceeded to let the person behind counter know to take off pain meds from our bill that we will not be taking them. We questioned the syringes that we were given for Titus and were told by her that she could show us how to administer them. So, I let her know that this could not be Titus' med. of Clavamox. The woman behind the counter looked at all of us not understanding but clearly seeing that we were given the wrong meds. Why now after 4 plus hours finally be given Clavamox and not just listen to us from the very beginning? Invoice a1fc75d

**6/20/18**

Had to bring Titus back in to the clinic with my daughter because he was not able to walk last night or this morning. When he tried to get up his back leg would just scoot causing him to spin on the ground and not catch a grip. After explaining his history to the new student I let her know that something had to have happened in the back when we brought him in yesterday. She came back showing my daughter and I a video of him walking in the back and she asked why I was crying? I let her know that I was so glad to see him walk again and what did they do for him. She said, "I was told that sometimes pets will do things like that when under stress or adrenaline." She also explained that his blood work shows no Valley fever but liver elevated. I said I will re-start him on the SAM-E, she stated that we should re-start him on the joint supplement, I explained to her that when I was told by the clinic on his appt. on the 17th that he may have arthritis, I have been giving him his supplements every day. Dr. Bennett came in and spoke to us for a while and said she heard about Titus and that he was seen by Neurology and that sometimes, older dogs just get stressed with procedures and need time to recoup. Give him a day or two and he should snap out of it. The Student came back saying there will not be a charge for this visit since we were here yesterday.

**6/27/18**

I called Dr. Bennett on 6/26/18 and she returned my call on the 27th. I explained that Titus is still having problems with is legs and that he has not snapped out of whatever it was that happened there.

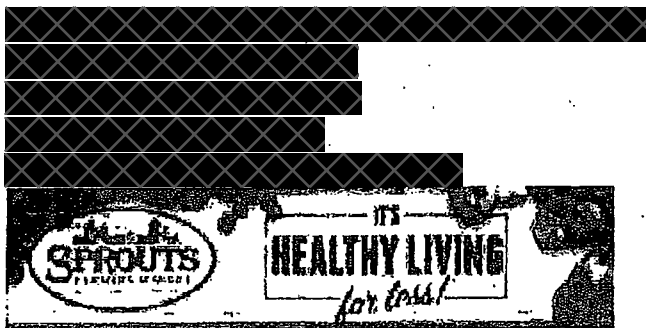
He is still having a lot of difficulty standing and walking. She spoke about steroids and that if I hold on she will speak to Dr. Evans because she just saw him. She told me to bring Titus in and Dr. Evans will see him. When arriving there with Titus and my husband, seeing a new student and having to go over his history was told that we would not be able to see Dr. Evans but she will have Titus be seen by him in the back. We were confused on why we couldn't see him especially since this would be Dr. Evans second time seeing Titus. Dr. Thomas came in and said Dr. Evans said Titus looked better than he did last week. I found that odd and concerning being that when I asked to put him on the ground again he was not able to walk. Once more, Dr. Thomas was confused on why Titus wasn't walking. She asked for his harness and tried walking him and finally took a few steps. Said we should see a Cardiologist per Dr. Evans and cut down on his pain meds to  $1\frac{1}{4}$  instead of  $1\frac{1}{2}$  so that he wouldn't be so sedated. Spoke about Acupuncture and Laser Therapy. Before leaving she asked if they could do the laser therapy on him and we agreed if she felt that would help him. She asked me to call her on Monday and tell her if that helped. She called the next day the 28th but I didn't see a difference yet. Called on Monday but never got a call back. Invoice a873039

**7/13/18**

Went into the clinic and spoke with Dr. Eberhardt letting him know what happened to Titus and his premature passing that I believed was due to him being seen the day of the 19th of June. He asked that my daughter and I put our trust in him and to give him 2 weeks to look into things. We asked about cameras, we let him know about wrong meds being given to us and that student seemed nervous and her demeanor was different and that we were not being kept informed. Dr. Eberhardt mentioned they Titus may have blown a disc. When letting us know about the cameras he said that they wouldn't keep film that long, and we explained it was only a couple of weeks. Then changed his mind and said there are no cameras, even though he stated absolute transparency and asked what our goals are. We were told that he would keep us informed, only to be given a call from the student Alexis on Wednesday 7/25/18 two days before Dr. Eberhardt was suppose to call us. She apologized about Titus but I did not hear the sincerity in her voice. I asked why is she just now calling me and how long and how many times did she have to aspirate Titus? She said when she couldn't, that another Tech tried and he was under much stress so they placed him in a kennel and not once were we notified about that, if we had been, we would not have allowed them to keep on. I told her I am my dog's advocate and wished I would have never taken Titus there that day and handed him over to her. He would still be here with us and I found myself not wanting to hear her voice and said that I do not except the apology from her. Dr. Eberhardt then called us after my conversation with Alexis and we had him on speaker to only apologize but not given any answers even hesitating to give us the info that we needed to send a message to the Dean Dr. T Graves.

**8/1/18**

Sent Dr. Graves email with no response so I called on Friday the 3rd and Jenny took my number after asking to speak to Dr. Graves and having her confirm his email address. She said he is unavailable for a while but would give my message. Got a call Monday from Alan who said that the Dr. Graves may be out for months and he will be helping out. I asked if he had read our email and said he had not yet apologized for what had happened when we were ready to end our conversation with him. But before our conversation was over we did get the next in charge under Dr. Graves and were told to contact Dr. Carla Gartrell. Sent her Email that was to be answered by Graves and she responded and we now will meet with her on Friday the 10th of Aug. One month after my Titus passed.





Tracy Riendeau &lt;tracy.riendeau@vetboard.az.gov&gt;

**Fw: Regarding Titus - Falcon**

3 messages

maria falcon [REDACTED]  
To: "Tracy.Riendeau@vetboard.az.gov" <Tracy.Riendeau@vetboard.az.gov>

Sun, Sep 16, 2018 at 11:01 AM

Hello Tracy,

Please see the email below to Dr. Graves, who we initially reached out to as the acting dean, in order to escalate our concerns. I will forward you the correspondence which transpired between Dr. Gartrell and my family, after we were told that Dr. Graves was out for extended medical leave by his assistant Alan, and unable to address our concerns.

Thank you,  
Maria and Family

**From:** Alicia Falcon [REDACTED]  
**Sent:** Wednesday, August 1, 2018 8:04 PM  
**To:** tgraves@midwestern.edu  
**Cc:** [REDACTED]  
**Subject:** Regarding Titus - Falcon

Dr. Graves,

It is with a troubled mind and heart that I am writing you today, after approaching Dr. Eberhardt to look into the case of our dear dog Titus, on the date of Friday, July 13th. My daughter and I visited your school to explain a series of unfortunate and disturbing events which culminated in the passing of our family dog. After a 45 minute retelling of the prior visits, incidents and interactions, Dr. Eberhardt assured us that he would do absolutely everything within his power to procure answers to our questions. We asked if there were cameras with footage we could review and he hesitated, stating at first, "I'm not sure, if there was footage, it wouldn't have been kept that long." We explained that it hadn't been that long at all, only two weeks, and then he replied, "there was definitely not footage and no cameras were back there." We left not knowing if there was footage or not. He asked that we trust him and that your school of animal medicine was upheld by the highest ethical standards, so transparency would be his end goal. He offered to walk us out of the side door, and when we politely declined, he asked us again to walk us out of the side door, stating, "I know it can be difficult to go out of the front." It was a strange gesture that made us even more uneasy.

Almost two weeks later, I received a call from the very student who initiated these chain of events to hear her explain that what actually occurred the day in question, was much different than that which was articulated in the examination reports. Her attitude was disingenuous and her apology hollow, and her narrative was disjointed and unclear. I was surprised that she was calling me, instead of Dr. Eberhardt, as this was grossly inappropriate, because this four year student, about to graduate, was ill-prepared with facts and information with respect to the severity of the situation.

Dr. Eberhardt called shortly after and explained that after conducting a thorough investigation with all parties involved, there wouldn't be much he could offer besides his apology. I had him on speaker with my husband, who was there with me during Titus' procedures, and my daughter, who spoke with Dr. Eberhardt herself. We attempted to retain information from his "thorough research" and received a myriad of "I don't



knows" and "I can't answer that." What we discovered was that Dr. Eberhardt had not fully investigated the appropriate parties involved at all, and could not account for a four hour block of time. This four hour marathon, should have only taken a matter of moments, as Alexis prefaced the aspiration procedure with, "It's a simple aspiration, that only takes 30 seconds." And we knew to account for time taken for his blood work. This gap in time has shown us to be an encounter of neglect and mistreatment. Dr. Eberhardt kept asking, "what more do you want me to do?" and our simple answer was, "give us information about the events that occurred during that day, as a result of you questioning your staff." It appears that the only person he really followed up with was, Alexis, and as her story changed throughout the course of the call, so did his. His attention was divided between the call and something else. When we asked for you (Dr. Graves) information he withheld it, stating that you would get back to us, and that he would relay everything to you. I am requesting that answers be given and your staff be held accountable as this was not just a dog to us, but a member of our family. We loved and cared for this dog deeply and it is almost comical the level of unprofessionalism, maltreatment and disregard we have been shown. We are looking to you to help us understand the events that transpired on June 19, 2018.

I want you to know that on the day of June 19th, 2018, when I brought my dog to your school, he was walking, eating, and functioning normally. After the four hour block of time, he was given back to me, his legs crossed underneath him and he wasn't able to walk. I was told he was fine to take home after being seen by your students, the veterinarian and the neurologist. He was still not walking by the next morning, and I took him in again, only to be told that he was worn out from the stress. I took him one more time after that, to be seen by the veterinarian who saw him on the 19th, and was told to keep him on his pain medications. The neurologist also explained that his status was better than it had been when he saw him on his previous appointment. My dog was not fine and his health drastically deteriorated.

These are our questions:

- How many students attempted the aspiration? (This is not documented on Titus' reports and it was explained to us by Alexis that she and other students tried to aspirate and were unsuccessful).
- At what point did your hospital realize that was an older, fragile dog, who was also blind and deaf and under distress?
- Why weren't we, as owners waiting in the lobby, notified of the difficulty the students seemed to have?
- How long did it take for a certified and licensed veterinarian to be called in?
- Why, after the certified and licensed veterinarian was called in, did they not diagnose the situation - ask questions about the dog, how long they had been there for, and the failed attempts, did they not explain the events to us as owners?
- Why did it take four hours?
- Why was the process and our animal's duress not articulated in his records?
- Why was it not mentioned in his records that the wrong medicine was prescribed and solicited to us?
- When does your school take liability for failed processes, neglect and mishandling of our family pet?

Thank you,  
The Falcon Family

maria falcon [REDACTED]  
To: "tracy.riendeau@vetboard.az.gov" <tracy.riendeau@vetboard.az.gov>

Sun, Sep 16, 2018 at 11:12 AM

Hi Tracy,

Please see our first attempt on August 6th to communicate with Dr. Gartrell, and her follow-up response.

Thank you,  
Maria and Family

---

**From:** Gartrell, Carla <cgartr@midwestern.edu>

**Sent:** Monday, August 6, 2018 3:23 PM

**To:** Alicia Falcon

**Cc:** [REDACTED]

**Subject:** RE: Regarding Titus - Falcon

Dear Mrs. Falcon and Family,

First of all, I am truly sorry of the loss of Titus. I lost my own 13-year old dog recently, so I know how hard it is losing a member of your family.

Can we set up a time to talk that is convenient for you either tomorrow afternoon or Wednesday? I can also open my calendar for you Thursday or Friday; you pick the day that is most convenient for you. I am also willing to meet you in person if you would rather have a face-to-face meeting.

If possible, can you give me a few available "windows of time" so I can ensure that I am free during those times. I will take today to complete the review of Titus' medical record and to talk to the doctor in charge of his case on the day the aspirate of the salivary gland was performed.

Again, my sincere condolences. I look forward to speaking with you soon,  
Carla



Carla L. Gartrell, D.V.M., J.D., DACVIM

Associate Dean for Academic Affairs

Associate Professor

MIDWESTERN UNIVERSITY | College of Veterinary Medicine

19555 N. 59th Ave. | Glendale, AZ 85308

P: 623-537-6360 | F: 623-537-6399 | E: [cgartr@midwestern.edu](mailto:cgartr@midwestern.edu)

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**From:** Alicia Falcon [REDACTED]

**Sent:** Monday, August 06, 2018 11:29 AM

**To:** Gartrell, Carla <cgartr@midwestern.edu>

**Cc:** [REDACTED]

**Subject:** Regarding Titus - Falcon

Dr. Gartrell,

Please see the email below which we sent last Wednesday (8/1/2018) that went unanswered. We spoke with Allen, Dr. Graves' assistant, just moments ago, and he explained Dr. Graves is out of office and all concerns should be passed to you. This is a matter of great importance and we are hoping that you can help us before escalating the matter further. Thank you and we are looking forward to your response.

Dr. Graves,

It is with a troubled mind and heart that I am writing you today, after approaching Dr. Eberhardt to look into the case of our dear dog Titus, on the date of Friday, July 13th. My daughter and I visited your school to explain a series of unfortunate and disturbing events which culminated in the passing of our family dog. After a 45 minute retelling of the prior visits, incidents and interactions, Dr. Eberhardt assured us that he would do absolutely everything within his power to procure answers to our questions. We asked if there were cameras with footage we could review and he hesitated, stating at first, "I'm not sure, if there was footage, it wouldn't have been kept that long." We explained that it hadn't been that long at all, only two weeks, and then he replied, "there was definitely not footage and no cameras were back there." We left not knowing if there was footage or not. He asked that we trust him and that your school of animal medicine was upheld by the highest ethical standards, so transparency would be his end goal. He offered to walk us out of the side door, and when we politely declined, he asked us again to walk us out of the side door, stating, "I know it can be difficult to go out of the front." It was a strange gesture that made us even more uneasy.

Almost two weeks later, I received a call from the very student who initiated these chain of events to hear her explain that what actually occurred the day in question, was much different than that which was articulated in the examination reports. Her attitude was disingenuous and her apology hollow, and her narrative was disjointed and unclear. I was surprised that she was calling me, instead of Dr. Eberhardt, as this was grossly inappropriate, because this four year student, about to graduate, was ill-prepared with facts and information with respect to the severity of the situation.

Dr. Eberhardt called shortly after and explained that after conducting a thorough investigation with all parties involved, there wouldn't be much he could offer besides his apology. I had him on speaker with my husband, who was there with me during Titus' procedures, and my daughter, who spoke with Dr. Eberhardt herself. We attempted to retain information from his "thorough research" and received a myriad of "I don't know" and "I can't answer that." What we discovered was that Dr. Eberhardt had not fully investigated the appropriate parties involved at all, and could not account for a four hour block of time. This four hour marathon, should have only taken a matter of moments, as Alexis prefaced the aspiration procedure with, "It's a simple aspiration, that only takes 30 seconds." And we knew to account for time taken for his blood work. This gap in time has shown us to be an encounter of neglect and mistreatment. Dr. Eberhardt kept asking, "what more do you want me to do?" and our simple answer was, "give us information about the events that occurred during that day, as a result of you questioning your staff." It appears that the only person he really followed up with was, Alexis, and as her story changed throughout the course of the call, so did his. His attention was divided between the call and something else. When we asked for you (Dr. Graves) information he withheld it, stating that you would get back to us, and that he would relay everything to you. I am requesting that answers be given and your staff be held accountable as this was not just a dog to us, but a member of our family. We loved and cared for this dog deeply and it is almost comical the level of unprofessionalism, maltreatment and disregard we have been shown. We are looking to you to help us understand the events that transpired on June 19, 2018.

I want you to know that on the day of June 19th, 2018, when I brought my dog to your school, he was walking, eating, and functioning normally. After the four hour block of time, he was given back to me, his legs crossed underneath him and he wasn't able to walk. I was told he was fine to take home after being seen by your students, the veterinarian and the neurologist. He was still not walking by the next morning, and I took him in again, only to be told that he was worn out from the stress. I took him one more time after that, to be seen by the veterinarian who saw him on the 19th, and was told to keep him on his pain medications. The neurologist also explained that his status was better than it had been when he saw him on his previous appointment. My dog was not fine and his health drastically deteriorated.

These are our questions:

- How many students attempted the aspiration? (This is not documented on Titus' reports and it was explained to us by Alexis that she and other students tried to aspirate and were unsuccessful).
- At what point did your hospital realize that was an older, fragile dog, who was also blind and deaf and under distress?
- Why weren't we, as owners waiting in the lobby, notified of the difficulty the students seemed to have?
- How long did it take for a certified and licensed veterinarian to be called in?
- Why, after the certified and licensed veterinarian was called in, did they not diagnose the situation - ask questions about the dog, how long they had been there for, and the failed attempts, did they not explain the events to us as owners?
- Why did it take four hours?
- Why was the process and our animal's duress not articulated in his records?
- Why was it not mentioned in his records that the wrong medicine was prescribed and solicited to us?
- When does your school take liability for failed processes, neglect and mishandling of our family pet?

Thank you,  
The Falcon Family

---

maria falcon [REDACTED]  
To: "tracy.riendeau@vetboard.az.gov" <tracy.riendeau@vetboard.az.gov>

Sun, Sep 16, 2018 at 11:16 AM

Hi Tracy,

After meeting with Dr. Gartrell and Dr. Patterson, on August 10th, for a face-to-face meeting, we received the email below and responded accordingly. Please review.

Thank you,  
Maria and Family

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From: maria falcon [REDACTED]  
Sent: Wednesday, August 15, 2018 9:21 PM  
To: Gartrell, Carla; Alicia Falcon  
Cc: [REDACTED]; Patterson, Coretta  
Subject: Re: Regarding Titus - Falcon

Good evening Dr. Gartrell,

Thank you for your message. We are all busy with work the rest of the week, so the soonest we will be able to set up a good time will be later next week. Prior to our next conversation, we wanted to ensure that the questions we had outlined in the original email to Dr. Graves were all addressed and documented - after you've spoken to all parties involved, including Dr. Evans who we did not speak to directly. Please see below.

Thank you,  
The Falcon Family

These are our questions:

- How many students attempted the aspiration? (This is not documented on Titus' reports and it was explained to us by Alexis that she and other students tried to aspirate and were unsuccessful).
- At what point did your hospital realize that was an older, fragile dog, who was also blind and deaf and under distress?
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- Why, after the certified and licensed veterinarian was called in, did they not diagnose the situation - ask questions about the dog, how long they had been there for, and the failed attempts, did they not explain the events to us as owners?
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- When does your school take liability for failed processes, neglect and mishandling of our family pet?

---

**From:** Gartrell, Carla <cgart@midwestern.edu>

**Sent:** Wednesday, August 15, 2018 8:17:29 AM

**To:** Alicia Falcon

**Co:** [REDACTED]; Patterson, Coretta

**Subject:** RE: Regarding Titus - Falcon

Good morning Falcon Family,

How are all of you doing? Coretta and I were wondering if there was a time we could talk this week, so we could check-in? We can speak over the phone if that is the most convenient. Please let me know a couple of time windows that might work.

Thank you,  
Carla



Carla L. Gartrell, D.V.M., J.D., DACVIM

Associate Dean for Academic Affairs

Associate Professor

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9/17/2018

State of Arizona Mail - Fw: Regarding Titus - Falcon

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Tracy Riendeau <tracy.riendeau@vetboard.az.gov>

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**FYI Fw: Phone call between Dr. Gartrell and the Falcon family [AJT]**

1 message

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**Gartrell, Carla** <cgartr@midwestern.edu>

Sun, Sep 16, 2018 at 11:21 AM

To: "tracy.riendeau@vetboard.az.gov" <tracy.riendeau@vetboard.az.gov>

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**From:** atomas@midwestern.edu <atomas@midwestern.edu> on behalf of Gartrell, Carla  
<cgartr@midwestern.edu>

**Sent:** Thursday, August 23, 2018 3:32 PM

**To:** [REDACTED]

**Subject:** Phone call between Dr. Gartrell and the Falcon family [AJT]

**When:** Monday, August 27, 2018 11:00 AM-12:00 PM.

**Where:** Ms. Falcon will call Dr. Gartrell



Tracy Riendeau &lt;tracy.riendeau@vetboard.az.gov&gt;

---

**Fw: Titus Falcon**

maria falcon [REDACTED]  
To: "tracy.riendeau@vetboard.az.gov" <tracy.riendeau@vetboard.az.gov>

Sun, Sep 16, 2018 at 11:25 AM

Hi Tracy,

Please see the response below from Dr. Gartrell. We received this email after the August 27th phone conversation between Dr. Gartrell, Dr. Patterson, my daughter and myself - we requested summaries from all parties involved and documented responses to the questions outlined in our previous emails, which Dr. Gartrell and Dr. Patterson agreed to provide.

Thank you,  
Maria and Family

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**From:** Gartrell, Carla <cgart@midwestern.edu>  
**Sent:** Wednesday, September 12, 2018 4:06 PM  
**To:** maria falcon  
**Cc:** Gartrell, Carla  
**Subject:** Titus Falcon

Dear Falcon Family:

I once again want to express my condolences for your loss of Titus. I know how much he was a part of your family.

I am writing in response to your email to me dated August 16, 2018. First let me say I appreciated the opportunity to meet with you on August 10, 2018 and discuss your concerns regarding the passing of Titus. As you know, Dr. Patterson and I spent several hours discussing Titus and his most recent appointment at our Companion Animal Clinic. In addition, we went over each of your questions that you had originally sent to Dean Graves that were subsequently forwarded to me. As I stated when we met, it is unfortunate that we did not timely communicate and keep you informed during Titus' most recent appointment. For that we again apologize.

Based upon our discussion and in recognition of the lack of timely communication, we have begun to put in place better protocols to ensure similar delayed communication does not occur again. As for your continuing request for responses to your questions, we answered those very questions during our meeting or during your conversations with other Companion Animal Clinic students and veterinarians, to the extent possible. I fully understand our answers may not be sufficient, however, there is no new information to relay.

Sincerely,  
Carla

Carla L. Gartrell, D.V.M., J.D., DACVIM  
Associate Dean for Academic Affairs  
Associate Professor  
MIDWESTERN UNIVERSITY | College of Veterinary Medicine  
19555 N. 59th Ave. | Glendale, AZ 85308  
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9/17/2018

State of Arizona Mail - Fw: Titus Falcon

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# MIDWESTERN UNIVERSITY

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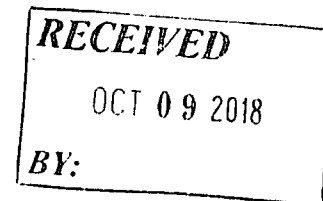
## OFFICE OF THE GENERAL COUNSEL

Barbara L. McCloud, Esq.  
Vice President and General Counsel  
E-mail: [bmcclo@midwestern.edu](mailto:bmcclo@midwestern.edu)

### VIA HAND DELIVERY ON OCTOBER 9, 2018

October 9, 2018

Arizona State Veterinary Medical Examining Board  
1740 W. Adams Street  
Suite 4600  
Phoenix, Arizona 85007



RE: Case Number 19-19, 19-20, 19-21, 19-22, 19-23  
Midwestern University College of Veterinary Medicine  
Companion Animal Clinic  
General Response including Personal Statements of Drs. Gartrell, Eberhardt, Bennett, Evans and Thomas

Dear Examining Board:

This correspondence and its attachments constitute the collective response of Midwestern University's ("University") College of Veterinary Medicine ("CVM") and its employees, Dr. Carla Gartrell, Dr. Jason Eberhardt, Dr. Patricia Bennett, Dr. Kara Thomas and Dr. Jason Evans (collectively "Clinician(s)"), to the above referenced Complaint brought by Maria Falcón ("Owner") on behalf of the family pet, Titus Falcon ("Titus"), a Yorkshire Terrier, with respect to various visits to the University's Companion Animal Clinic ("CAC"). The Complaint served upon each of the Clinicians is identical except for Section A of Cover Page, which varies only to the extent of the name of the individual Clinician. To reduce repetition, this correspondence provides the summary of the CAC's care and treatment of Titus and the individual signed statements of each of the clinicians are attached and incorporated by reference.<sup>1</sup> A single hard copy of the medical record is also attached to this correspondence and an electronic copy of the record can be found on the accompanying DVD.

### MIDWESTERN UNIVERSITY

The University is an independent, not-for-profit, corporation accredited by the Higher Learning Commission/Commission of the North Central Association of Colleges and Schools. The University provides graduate and postgraduate education in the health sciences through 13 colleges, including the CVM, located in Glendale, Arizona. The CVM operates under the grant of authority issued by the Arizona State Board of Private Postsecondary Education. CVM received a Letter of Reasonable Assurance in June 2013 from the American Veterinary Medical Association and Provisional Accreditation in 2016. The CVM operates the CAC, which offers complete companion animal veterinary care. Our veterinarians utilize the latest technologies and treatments to provide care to family pets. The CAC also provides extensive training for the next generation of veterinarians while serving the local community.

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<sup>1</sup> Unfortunately, Dr. Jason Eberhardt is currently in the hospital and unable to sign his statement. As soon as he is released and able to sign, his fully executed personal statement will be provided to the Board.

The CAC and its veterinary and support staff take their respective roles and responsibilities seriously, both as the healthcare team for our client's four-legged family members and as educators of tomorrow's veterinarians. The CAC team's focus is on providing comprehensive care to the pets and important education to the owners.

#### **VETERINARIAN ADMINISTRATION AND CARE TEAM**

The following administrators and faculty have each received an identical ASVMEB Complaint (except for the Case Number) and their individual responses are attached to this correspondence.

- Dr. Kara Thomas, D.V.M., DVMA, is a Clinical Assistant Professor in Small Animal Primary Care. Case Number 19-19.
- Dr. Patricia Bennett, D.V.M., is a Clinical Assistant Professor in Small Animal Primary Care whose practice focus is general medicine, dentistry, senior pet care, wellness and preventative medicine, and diagnostic imaging. Case Number 19-20.
- Dr. Jason Eberhardt, D.V.M., M.S., DACVIM, is the Director, Companion Animal Clinic and Clinical Assistant Professor in Small Animal Internal Medicine. Case Number 19-21.
- Dr. Jason Evans, D.V.M., M.S., DACVIM (Neurology), is a Clinical Assistant Professor in Neurology. Case Number 19-22.
- Dr. Carla Gartrell, D.V.M., J.D., DACVIM, is the Associate Dean of the College of Veterinary Medicine. Case Number 19-23.

In addition to the care team listed above, numerous student doctors ("SD"), as well as other clinicians and technicians took part in Titus' care. The attached medical records detail the names and credentials of those individuals who assisted with Titus' care.

#### **BRIEF OVERVIEW**

Titus was a thirteen-year-old male with multiple severe, chronic, uninvestigated and untreated conditions, including Cushing's Disease. Titus was initially brought to the CAC for a dental consult and cleaning for Grade 4 dental disease. Prior to and during the CAC's care and treatment of Titus, he remained the patient of an independent veterinarian. In 2018, Titus was seen six times in the CAC, including his initial dental consult and subsequent dental treatment: March 20<sup>th</sup>, May 10<sup>th</sup>, May 17<sup>th</sup>, June 19<sup>th</sup>, June 20<sup>th</sup> and June 27<sup>th</sup>.

Upon presentation at the first four visits, the Owner reported that Titus was quiet at home, had been slowing down more in the past months, possibly blind and deaf, didn't play, had problems at times with walking, standing, front leg weakness, recurrent lymph node swelling, bad panting at night, bad mouth odor, increased thirst, recurrent poor appetite, frequent urination and diarrhea. These and other findings were observed upon examination, including these additional objective findings: Grade 4 dental disease, various and significant skin conditions, immature and mature cataracts, abdominal distension and hepatomegaly, mild muscle wasting, joint crepitus, mild loss of proprioception, and bilateral hip and spine pain. The assessment of Titus attributed the above findings to, among other things, age, genetic predisposition, untreated Cushing's Disease, previous stroke, arthritis, and degenerative disc disease. Titus' prognosis ranged between fair and guarded.

#### **SPECIFIC VISIT SUMMARIES**

What follows are summaries of the June 19<sup>th</sup>, June 20<sup>th</sup> and June 27<sup>th</sup> visits. For specific details regarding each of these visits and the attending clinician, student doctor and technician present for each visit, the reader is directed to the patient electronic medical record ("EMR"), attached to this correspondence. *See* EMR (MWU 00001-00232.) The CAC uses StringSoft as its electronic health record system. The EMR also contains Client Notes. Once a patient of record is established, any incoming call is noted in the StringSoft system. The date, time, name of the staff member taking/making the call and the note with respect to the call are all recorded in Client Notes.

**JUNE 19, 2018 VISIT**

Titus presented to the CAC on June 19<sup>th</sup> with a complaint of swollen lymph nodes, noticed four days prior. According to Owner, Titus had a history of recurrent swelling of lymph nodes. On this day, Owner reiterated numerous conditions, including lack of appetite, bad odor from mouth, lethargic, wobbling when walking, and increased urination. In the examination room, Titus was observed as having the findings noted above and in the Brief Overview. In addition, Titus was observed as circling to the right when walking.

The assessment, among other things, included:

- submandibular swelling (rule out (r/o) lymphoma, infection, hyperactive lymph node, salivary hyperplasia, reactive salivary gland, salivary mucocele, other neoplasia),
- neuro deficits (r/o age related, blindness related, right forebrain pathology, some are historical),
- back/hip pain (r/o intervertebral disk disease (IVDD), arthritis, valley fever);
- the prognosis was fair to guarded.

The diagnostic plan was to perform a fine needle aspiration and cytology of the swelling to determine the appropriate course of action. The aspiration was performed by the SD. When it was determined the aspiration resulted in insufficient sample collection for assessment, Dr. Kara Thomas performed another aspiration which did result in sufficient sample collection for analysis. As per CAC safety protocols, a muzzle was placed on Titus during both aspirations. After the aspiration, Titus became lethargic and was allowed to rest in a kennel. As a result, the overall time to perform the aspiration took longer than planned, as did Titus' recovery. Unfortunately, this delay was not communicated to the owner, who grew increasingly concerned with the passage of time.

After recovery Titus was taken to Owner who voiced concerns about Titus' continuing lethargy. Dr. Thomas entered the examination room and asked Owner if she could perform another examination, to which Owner consented. Titus was placed on the examination table where Dr. Thomas determined that Titus may be showing neurologic signs. After explaining her concerns to Owner, Dr. Thomas asked for permission to take Titus into the treatment area so that a courtesy neurologic consult could be performed by Dr. Evans. Dr. Evans is a specialist and sees patients on an established rotation schedule. However, on this day he was not on clinical service but available for in-house consultation as the need arises. If an Owner wants their pet to be evaluated formally by Dr. Evans, they make a specialty appointment. Dr. Evans, if available, can be brought in for an in-house consult, which was the circumstance here.

Titus underwent a neurologic consult over the next approximate hour. The neurologic consult found Titus to be quiet, mentally subdued, but responsive, slowly ambulatory with moderate truncal ataxia with tendency to turn right. Other observations reported had been reported at prior visits and upon intake of the current visit. Titus gradually but steadily improved over the next thirty/forty minutes, the tendency to turn right was nearly resolved and he was walking with more speed and determination. The diagnosis included the possibility of: stress induced reveal of underlying intracranial pathology vs. stress unmasking underlying age related or congenital changes, active vascular event, postural deficits, and/or chronic IVDD. Titus recovered to the condition he was in at presentation and was discharged with the recommendation for rest to allow for continued recovery and the consideration of a MR brain scan.

**THE JUNE 20, 2018 VISIT**

Titus was brought to the CAC for an urgent care visit the day following the fine needle aspiration. The EMR shows that Titus was checked in under Dr. McArdell, who was normally on shift for urgent care visits. However, on June 20<sup>th</sup>, Dr. McArdell was off the floor for professional development. As a result, a Primary

Care team member takes over the urgent care cases. On June 20<sup>th</sup>, Dr. Bennett was the Primary Care team member who saw Titus.

Owner reported Titus was showing back leg weakness, pain in hindlimbs and trouble standing/walking after yesterday's visit. Owner stated they felt like something had happened to Titus while he was being treated. Owner stated Titus is unable to walk, is panting and she was up all night with him. There is still swelling in the left submandibular lymph node. Titus had a bowel movement the previous evening but had not used the bathroom this morning. Owner stated Titus' activity had decreased since the June 19<sup>th</sup> visit and his behavior seemed abnormal. Owner stated they are not giving Titus any medication other than an occasional Cosequin and when administered the dose is ½ tablet/day. Titus was brought into the treatment area where he was observed by the SD and Dr. Bennett to be bright, alert and responsive. His previously noted chronic conditions remained but it was noted the left submandibular lymph node swelling had decreased. Specific to Titus' musculoskeletal and neurologic conditions, Titus was found to be ambulatory on all four legs once he was put on a leash and placed on the ground. He continued to display generalized muscle atrophy, crepitus on manipulation of hips and stifle bilaterally, and intermittent unsteadiness while standing. His conscious proprioception (CP) was intact in both forelimbs and decreased in both hindlimbs. Titus did not appear to be in any pain. While he winced on palpation of thoracolumbar spine and hip the previous day, it was not appreciated today.

The assessment, among other things, included:

- hip and hindlimb crepitus: DJD (most likely), hip dysplasia;
- right medial buttress: CCLr (partial vs. full), meniscus injury, secondary DJD;
- history of submandibular swelling (confirmed left cervical salivary mucocele);
- the long-term prognosis was communicated as poor due to untreated Cushing's, osteoarthritis and neurologic deficits.

While in the treatment area, Dr. Evans, who had seen Titus for a courtesy neurologic consult the prior day (June 19, 2018), observed on the appointment board that Titus was presenting with a report of inability to use back legs. Dr. Evans observed Titus was standing and walking. He approached Titus and further observed Titus had shown improvement from the prior day, with even less turn to the right. Dr. Evans communicated this information to Dr. Bennett and let her know he was glad that Titus was able to walk and was improving overall.

The SD and then Dr. Bennett discussed with Owner Titus' discharge and recommended diagnostic plan, including radiographs. The owner elected to defer this in attempt to minimize Titus' stress. Owner was advised to bring Titus back in for radiographs if signs recur (i.e. paresis/paralysis, ataxia, circling, falling over, etc.) Dr. Bennett also advised Owner that older dogs can be stressed by procedures and can exhibit certain signs and behaviors as a result. Dr. Bennett recommended to Owner to let Titus rest and recover. It was also recommended, among other things, to restart Titus on liver protectants, such as Denamarin, as his bloodwork revealed increased hepatic enzymes. Owner elected to give him SAMe and milk thistle. It was also recommended to restart Titus on joint supplements, such as Cosequin, as well as pain medication. The SD and Dr. Bennett explained that Titus was arthritic, especially in his hindend, which was a source of his pain and discomfort. Owner stated they have left over Tramadol from his dental procedure and would like to use that before prescribing additional medication. Owner was instructed to give ½ of a 50mg tablet once every 12 hours as needed for pain and was told this may cause sedation. Owner was advised that due to Titus' arthritis and history of back pain, to limit his exercise and always be supervised when outdoors.



### THE JUNE 27, 2018 VISIT

Titus was brought to the CAC for an urgent care visit on June 27, 2018. Owner had called the previous day requesting a call as she reported Titus was having continued difficulty walking.<sup>2</sup> On June 27, 2018, Dr. Bennett returned Owner's call.<sup>3</sup> Owner advised Dr. Bennett that Titus was having a progression of problems since his June 19<sup>th</sup> visit. This included inability to walk and needing to be hand fed and increased nursing care. Owner reported Titus was lethargic, and Owner believed it all stemmed from the June 19<sup>th</sup> visit. Dr. Bennett discussed IVDD and how some of Titus' clinical signs are consistent with this but would need to be re-evaluated. Dr. Bennett also recommended a neurological consult. Dr. Bennett advised Owner the neurologist would be available and to bring Titus in that same day on urgent care. The urgent care doctor was again out for professional development so a Primary Care team member, Dr. Thomas saw Titus.

Upon presentation to the CAC, Owner reported Titus is lethargic, unable to move back legs, still not himself, can't stand once he is down, back legs seem less efficient. Owner wanted to discuss prescribing oral steroids. Owner stated was giving Titus SAME and milk thistle but only giving occasional Cosequin. Upon examination, Titus was found to be ambulatory on all four legs once a leash was put on and he was placed on the ground. Most of his previously observed conditions were present, but it was noted Owner questioned the IVDD assessment. Titus was then brought back for a neurologic examination by Dr. Evans, who had performed the neurologic examination the prior week.

Dr. Evans' noted the Owner reported that Titus was not able to get up after periods of rest and thought to not be using his hind legs. Dr. Evans recapped Titus' problems and clinical findings from the prior week: period of encephalopathic signs (dull mentation, absent menace, poor ambulation, circling to the right, absent postural reactions of the left rear limb) that occurred after an aspirate of a skin mass on the neck (June 19<sup>th</sup>); these signs greatly improved after about 40 minutes and are thought due to stress unmasking either previously subclinical intracranial disease or other age related changes; further evaluation the following day (June 20<sup>th</sup>) for similar complaint of not using the rear limbs but was walking and evaluated to be even more improved than the previous evening.

The neurologic examination on June 27<sup>th</sup> noted Titus was quiet, mentally subdued but appropriately responsive. He was ambulatory with a slow gait without overt tendency to turn in one direction over another and, initially, without overt ataxia. With increased activity a progressively mild to moderate symmetrical ataxia and standing truncal sway developed. This exercise intolerance was proportionately accompanied by an increased respiratory effort. The ataxia and respiratory effort improved with a few minute's rest. There was also a mild lameness of the right rear limb. Titus' spinal reflexes were subjectively normal to all four limbs, as was his postural reactions. It was noted the previously reported CP deficit to the left rear limb had resolved. Titus had an absent menace OS (this is the eye with the mature cataract) and the remaining cranial nerve exam was unremarkable. Titus had normal cutaneous trunci reflex and no overt pain on cervical manipulation or spinal palpation. Titus exhibited moderate exercise intolerance and a thickening of right stifle with positive cranial drawer sign.

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<sup>2</sup> The record of the call can be found in the Client Notes. See EMR (MWU00225-00232). All incoming and outgoing calls to the CAC are recorded in the Client Notes, which notes date and time, as well as other information.

<sup>3</sup> The record of the call can be found in the Client Notes. See EMR (MWU00225-00232).

The differential diagnosis resulting from the neurologic examination included, in part:

- Brain: consider exacerbation of subclinical underlying pathology (neoplasia, hydrocephalus, prior vascular event) or underlying age-related changes from emerging systemic disorder (cardiovascular/pulmonary disease +/- concurrent metabolic disorder);
- Spinal: chronic disk disease, age related changes, previous vascular event; active spinal disease such as neoplasia or myelitis considered possible but less likely. Some degree of mild to moderate or even multiple chronic disk protrusions would not be completely unexpected given the age and breed. Even mild spinal cord changes could be exacerbated by underlying intracranial disease and/or some other emerging systemic disorder. Note: The previously reported spinal cord signs are improved or resolved today compared to previous examinations.
- Systemic disease: cardiovascular/pulmonary disorder; hyperadrenocorticism +/- other metabolic disorder;
- Right cranial cruciate rupture (chronic).
- Prognosis is guarded pending diagnosis.

Recommendations from the neurologic examination included thoracic radiographs, consultation with a cardiologist, restricted activity, consider course of tramadol (no corticosteroids or NSAIDs without cardiology consult), could consider advanced imaging (MR scan of brain, cervical and thoracolumbar cord) but would first get evaluation from cardiologist.

As a result of the examination, Dr. Thomas recommended laser therapy treatment of hips and stifles. The therapy would be complimentary, and Owner agreed to proceed, and the therapy was performed.

Titus was discharged with instructions. Those instructions noted that while some neuro signs were present, the most recent and concerning things may be attributed to some underlying cardiovascular issue. It was recommended this should be assessed further. The instructions noted the following from the physical exam: arthritis in rear limbs, possible ruptured ligament in his right stifle due to a positive cranial drawer test performed during exam, hair coat thinning – likely due to untreated Cushing's and cataracts in both eyes. The instructions also recommended Owner schedule a cardiology consult and provided information for Owner including various provider and location options. The instructions advised Owner to continue to monitor Titus at home for any improvement or worsening of signs; the hope that the lower dose of pain medications will help Titus feel better without making him too sedate; if any (even mild) improvement after the laser therapy, Owner could consider purchasing a package plan for additional treatments as this could help relieve some pain and inflammation from the arthritis. It was noted that acupuncture was discussed as another adjunctive therapy. The instructions recommended continuing Titus on consequent, milk thistle, SAME as directed. Tramadol was prescribed and dispensed with instructions to give ¼ of a 50mg tablet by mouth every 12 hours as needed for pain. Owner was also advised to limit the stress and activity level of Titus at home, on the chance there are any underlying cardiovascular concerns, the SD and Clinicians do not want it to be exacerbated.

#### **JUNE 28, 2018, FOLLOW UP**

On June 28<sup>th</sup>, Dr. Kara Thomas called Owner at 6:20 p.m. to check on Titus and see how he was doing after yesterday's visit.<sup>4</sup> Owner advised Dr. Thomas they had given Titus a ¼ tablet of the tramadol yesterday and again this a.m. Owner advised Titus was currently laying down since he had been walking around for 30 minutes. Dr. Thomas asked Owner to keep her updated as to how Titus was doing. Owner asked about ligament rupture on the discharge instructions. Dr. Thomas explained that pets have an ACL like people and they can rupture or tear parts of it and this is possible cause for the rear end pain, but it would need to be confirmed

<sup>4</sup> The record of the call can be found in the Client Notes. See EMR (MWU00225-00232).

with radiographs or MRI. Owner stated she understood but was not interested in testing. Dr. Thomas reiterated to Owner to call with any questions/concerns.

### JULY 2018

Titus was not seen in the CAC after June 27, 2018. On July 13, 2018, in the afternoon, Owner and Owner's daughter came to the CAC and requested to meet with CAC Director, Dr. Jason Eberhardt. Dr. Eberhardt met with them immediately thereafter. Owner advised that Titus had died two days prior. During that meeting Owner recounted Titus' visits to the CAC and their concern with respect to the June 19<sup>th</sup> visit – specifically how a simple aspiration took four hours, and no one updated her on the status during that time. Owner further stated that SD did not seem to act in a caring way and that afterwards Titus never seemed to be the same. Owner further stated that despite several subsequent visits, no one ever fully addressed or communicated her concerns and that she is convinced something happened to Titus during the June 19<sup>th</sup> visit. Dr. Eberhardt advised Owner it is not the culture of the CAC to hide anything from Owner. Owner wants to see the video from those four hours. Dr. Eberhardt advised there is no video. Dr. Eberhardt stated he was sorry for their loss of Titus and agreed that communications should have been better on June 19<sup>th</sup>. Dr. Eberhardt committed to looking into Owner's concerns and would call her with an update on his findings in two weeks.

As part of Dr. Eberhardt's review, he communicated to SD Alexis Kersting that Titus' Owner perceived that Kersting did not act in a caring way. SD Kersting took responsibility and called Owner to discuss their concerns.<sup>5</sup> SD Kersting advised Owner she had heard about Titus' passing and wanted to offer her condolences. SD Kersting repeatedly apologized for Owner's perception and Owner repeatedly advised SD Kersting that her apologies meant nothing. Owner further questioned why the SD was calling, rather than Dr. Eberhardt. SD Kersting explained that after discussing the matter with Dr. Eberhardt, she felt it would be most professional for the SD to personally call Owner, with Dr. Thomas present, and apologize since SD Kersting had handled Titus' case. Owner requested that Dr. Eberhardt call her.

Dr. Eberhardt called Owner shortly thereafter.<sup>6</sup> Dr. Eberhardt was placed on speaker and spoke with Owner, her husband and her daughter. Owner stated she wanted a detailed analysis of what happened during the four-hour visit on June 19<sup>th</sup>. Dr. Eberhardt admitted the CAC should have done a better job keeping them informed during the visit. He further stated that after talking with his staff, they planned on speaking with the faculty and students about doing a better job keeping owners informed. Owner refused to accept that a detailed analysis of the four hours couldn't be provided and wanted to speak with the "board." Dr. Eberhardt provided Owner with the name and contact information of the CVM Dean. Dr. Eberhardt noted Owner would not communicate what Dr. Eberhardt could do to resolve the matter, did not accept that the information contained in the record had not been communicated and were very angry with him for not knowing all the details.

Thereafter, Owner emailed Dean Graves, who unfortunately was out on leave. Their email was provided to Associate Dean Carla Gartrell, who met with Owner and her husband and daughter on August 10, 2018, with Assistant Dean Patterson present as well. Drs. Gartrell and Patterson met with Owner, her husband and daughter for several hours, discussing Titus' care at the CAC, the June 19<sup>th</sup> visit, and went through each of the questions presented by Owner and discussed and answered each question. Dr. Gartrell apologized again for not timely communicating during the June 19<sup>th</sup> visit. Dr. Gartrell advised Owner that the CAC had already begun to put in place better protocols to ensure delayed communications do not occur again. Owner asked what kind of disciplinary action would be taken against the personnel involved in the case of Titus. Dr. Gartrell explained that the CAC is part of the CVM and is therefore a teaching facility and reminded Owner that the nature of the CAC was explained to them when they first brought Titus in as a patient as it is in our literature

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<sup>5</sup> The record of the call can be found in the Client Notes. See EMR (MWU00225-00232).

<sup>6</sup> The record of the call can be found in the Client Notes. See EMR (MWU00225-00232).

explaining how the CAC functions. Dr. Gartrell further explained that while she understood their frustration, all information about Titus' care on June 19<sup>th</sup> and subsequent visits had been explained in detail and there was no new information to share. Finally, Dr. Gartrell shared with them that Titus was an older dog with significant medical issues and without a necropsy, there wasn't any way to determine whether or not his death was connected in any way to the care he received at the CAC. The meeting ended amicably, Owner advised she would think about the discussion and would get back with Dr. Gartrell.

Despite the time spent and robust discussion and detailed responses to Owners questions, Owner emailed Dr. Gartrell on August 16, 2018, reiterating the request for answers to the same questions Dr. Gartrell had spent two hours answering on August 10<sup>th</sup>. Dr. Gartrell responded to Owner in a brief phone call, advising that she had previously answered those questions, as had numerous other Clinicians and SD Kersting. Dr. Gartrell advised she understood those answers may not be sufficient to Owner, but there was no new information to relay. Owner was still not satisfied, so Dr. Gartrell made arrangements to have another conversation the following week to include her family.

On Monday, August 27<sup>th</sup>, 2018, Owner called Dr. Gartrell with her daughter included on the call. Owner was still very upset over the care Titus received at the CAC. At this time, Owner also demanded that Dr. Gartrell dismiss SD Kersting from the CVM and terminate each of the Clinicians who treated Titus on June 19<sup>th</sup> and thereafter. Dr. Gartrell advised Owner the student would not be dismissed from CVM and the Clinicians would not be terminated. Dr. Gartrell further advised Owner we would refund the money she was charged for Titus' June 19<sup>th</sup> and subsequent visits. During this call Owner again requested a written summary from every person that touched Titus and a written response to each of the questions they originally emailed to Dean Graves on August 1, 2018. Dr. Gartrell let the Owner know she would review their requests, would also re-review the medical record and once again speak with Dr. Eberhardt, the Clinicians and the SD.

Dr. Gartrell then proceeded, along with the assistance of Dr. Patterson, to speak with Dr. Eberhardt, the Clinicians and the SD to go over the medical record and Owner's complaint. After review, there was no new information to provide Owner. Further, attempting to obtain a written statement from every person that touched Titus was duplicative of what was already in the medical record. Finally, Dr. Gartrell noted she had answered each one of Owner's questions during their August 10<sup>th</sup>, meeting. It was clear Owner did not accept the answers already provided and further attempts to repeat the information would not resolve the matter. Dr. Gartrell responded to Owner with an email summarizing the fact there was no new information to impart and we would not be providing Owner the requested written statements or providing written responses to the questions Dr. Gartrell and others had already answered in detail.

Thereafter, Dr. Gartrell processed a refund to Owner in the amount of \$470.04, considering the Owner's dissatisfaction with the care and treatment of Titus.

#### IN SUMMARY

As stated previously, Titus presented to the CAC as a thirteen-year-old male with multiple severe, chronic, undiagnosed and untreated conditions, including Cushing's Disease, Grade 4 dental disease and prior history of stroke, cataracts, difficulty standing, walking, was often quiet, didn't play and tired quickly with exertion. He was seen six times in the CAC: March 20<sup>th</sup> (dental consult), May 10<sup>th</sup> (dental treatment), May 17<sup>th</sup> (post dental check-up and internal medicine consult with Dr. Carter for uncontrolled Cushing's), June 19<sup>th</sup> (urgent care, unscheduled visit for swollen lymph nodes), June 20<sup>th</sup> (urgent care, unscheduled visit for concerns regarding lethargy and other symptoms after treatment on June 19<sup>th</sup>), and June 27<sup>th</sup> (urgent care, unscheduled visit for continuing concerns).

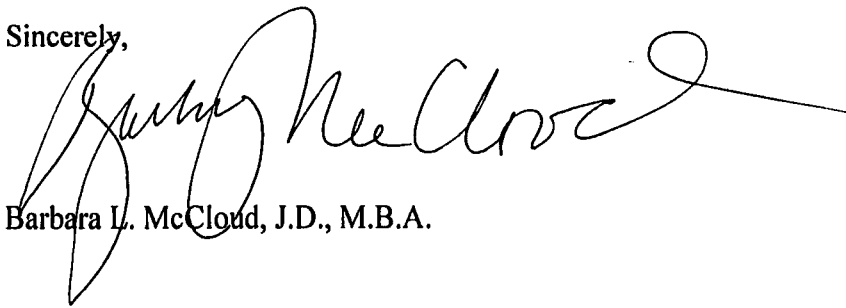
When presented at each of these visits, the medical record shows that Titus consistently exhibited the same conditions and symptoms, except for the June 19<sup>th</sup> visit when he presented with the swollen lymph nodes and the tendency to circle to the right when walking. Of note, at the end of the June 19<sup>th</sup> visit, with respect to Titus' musculoskeletal and neurologic status, he was behaving and ambulating at the same level he had at the initiation of the visit. Subsequently, at the June 20<sup>th</sup> and June 27<sup>th</sup> visits, the medical record notes that Titus again consistently exhibited many of the same conditions and symptoms overall, and specific to his musculoskeletal and neurologic status had shown improvement since the June 19<sup>th</sup> visit.

Most of Titus' chronic conditions went undiagnosed and untreated for substantial periods of time by Owner. In addition, with respect to the recommendations for further testing and treatment to determine more definitively the cause of many of Titus' conditions, Owner declined to follow those recommendations. According to Owner, Titus passed on August 10<sup>th</sup> or 11<sup>th</sup>, thirteen or fourteen days after his last visit to the CAC. Prior to Titus' death, the last contact by the CAC to Owner was the telephone call Dr. Thomas placed to the Owner on June 28<sup>th</sup>. During this call, Owner informed Dr. Thomas that Titus was resting after being active and walking around for 30 minutes. Owner did not have a necropsy performed so the exact cause of death is unknown.

A review of Owner's complaint both internally to the CAC and the ASVMEB, shows the primary issue to be the lack of communication during the June 19<sup>th</sup> visit. The perception of Owner was the visit should have been short but was four hours in length. There is no evidence that Titus was provided with negligent, substandard or inappropriate care and treatment. There is evidence that Titus was an older dog with multiple severe, undiagnosed and untreated chronic conditions, many of which may have contributed or caused his death at the age of thirteen. While Titus' death is difficult to accept, without a necropsy providing evidence of the cause of death, there is no connection between the treatment provided by the CAC and their veterinary staff and his death.

Should you need additional information with respect to this correspondence and the attached records, please do not hesitate to contact me.

Sincerely,



Barbara L. McCloud, J.D., M.B.A.



# MIDWESTERN UNIVERSITY

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19555 North 59<sup>th</sup> Avenue  
Glendale, AZ 85308  
[www.midwestern.edu](http://www.midwestern.edu)

October 8, 2018

Arizona State Veterinary Medical Examining Board  
1740 W. Adams Street  
Suite 4600  
Phoenix, Arizona 85007

RE: PERSONAL STATEMENT OF DR. JASON EBERHARDT  
Case Number 19-21  
Midwestern University College of Veterinary Medicine  
Companion Animal Clinic

Dear Examining Board:

This Personal Statement and the documents referenced herein constitute my account of interactions with the Falcón family ("Owner") regarding their pet Titus Falcón ("Titus"). I am providing this statement in response to Case Number 19-21, the Arizona State Veterinary Medical Examining Board ("ASVMEB") Complaint filed against me. At the time of the events in question, I was employed by Midwestern University's College of Veterinary Medicine ("CVM") as a Clinical Assistant Professor in Small Animal Internal Medicine and was the Director of its Companion Animal Clinic ("CAC"). In this role I oversaw and assisted the administrative team, faculty and staff in the day to day operations of the CAC. This Personal Statement is attached to and incorporated by reference into the General Response submitted by Midwestern University on my behalf.

**JULY 13, 2018**

On July 13, 2018, in the afternoon, Owner and Owner's daughter came to the CAC and requested to meet with the Director. Staff notified me of this request and I met with them immediately thereafter. Owner advised that Titus had died two days prior and they believed his death was caused by the care and treatment he received at the CAC. During that meeting Owner recounted Titus' visits to the CAC and their concern with respect to the June 19<sup>th</sup> visit – specifically how a simple fine needle aspiration of a neck lesion took four hours and no one updated her on the status during that time. Owner further stated that the student doctor ("SD") did not seem to act in a caring way and that afterwards Titus never seemed to be the same. Owner further stated that despite several subsequent visits, no one ever fully addressed or communicated her concerns and that she is convinced something happened to Titus during the June 19<sup>th</sup> visit. After listening to Owner, I advised her that it is not the culture of the CAC to hide anything from owners. Owner asked to see the video from those four hours. I had never been asked that question before and had to think for a moment before informing Owner that there are no video cameras or recording of the treatment area. I expressed sorrow for their loss of Titus and agreed that communications should have been better on June 19<sup>th</sup>. I advised them that I would look into their concerns and would call with an update on my findings in two weeks. The reason for this length of time was I knew that at least one of the clinicians involved was on vacation and that a recent student rotation block schedule change had occurred – meaning the SD in question may or may not be on campus.

Thereafter I proceeded to review relevant portions of the EMR and speak with the various students, staff and clinicians who had been involved with Titus on the days questioned. Part of that review included advising SD Alexis Kersting that Titus' Owner perceived that Kersting did not communicate effectively on June 19<sup>th</sup> regarding the timeline for the fine needle aspirate and did not act appropriately and had almost dropped Titus when handling him back to Owner at the conclusion of the June 19, 2018, visit. SD Kersting and I discussed what she should do with respect to Owners concerns. SD Kersting wanted to take personal responsibility and requested to call Owner to discuss her concerns and apologize.

#### **JULY 25, 2018**

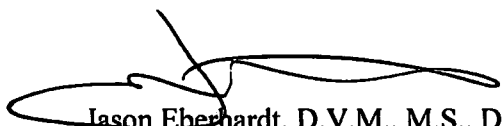
I understand that SD Kersting called Owner, while Dr. Kara Thomas was in the room listening. The details of SD Kersting's call with Owner is set forth in the Client Notes section of the EMR. *See* EMR (MWU00226). I was later informed by Dr. Thomas that Owner had repeatedly yelled and was disrespectful to SD Kersting during this conversation, which Dr. Thomas could hear despite the phone not being on speaker. I was also told Owner dismissed SD Kersting's apologies. According to SD Kersting's note, Owner repeatedly asked why SD Kersting was calling and stated that I should be the one calling to speak with her, not the student. I understand from Dr. Thomas that by the end of the call, SD Kersting was shaking and in tears.

Approximately thirty minutes later I called Owner, consistent with my earlier commitment to do so within two weeks of my meeting with them on July 13, 2018. As detailed in the Client Notes section of the EMR, I advised Owner we should have done a better job communicating with her during the June 19<sup>th</sup> visit. Owner repeatedly requested a more detailed account of the June 19<sup>th</sup> visit. They rejected my statement that a minute by minute account would be impossible to provide and believed that I was withholding details that were in the medical record. They also requested that I provide them with a list of all team members (faculty, staff and students) who were present in the clinic the day in question and they further rejected my statement that nothing untoward had occurred to Titus during his visit. I again apologized but repeated that I could not tell them anything other than what is evidenced in the record and what students, staff and clinicians had shared with me, which I in turn shared with them in full. Owner was clearly angry that I was unable to share further details of the June 19<sup>th</sup> visit. Owner could not provide me with any tangible options to satisfy this anger when asked. Owner wanted to talk to the "board" and I advised that Dr. Graves was the Dean of CVM and gave them his contact information.

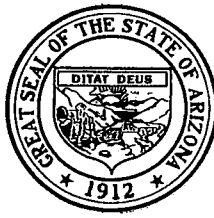
#### **SUMMARY**

As the information above and the EMR shows, at no time did I provide any medical recommendations, medical care or treatment to Titus. I had no interaction with Owner before they asked to meet with me on July 13, 2018. As the record shows, Titus had multiple severe, chronic conditions that were uninvestigated and untreated, despite our recommendations. The last contact the CAC had with Owner was the call placed by Dr. Thomas on June 28, 2018, at which time the Owner advised that Titus had been walking around for about thirty minutes and was then resting. After June 27, 2018, no one at the CAC physically saw Titus. I am not aware of the condition Titus was in at the time of his death, the moments that proceeded his death or his cause of death as this was never a focus of any of my conversations with Owner. After conducting my internal investigation and subsequent review as a result of this Complaint, I believe the EMR accurately reflects the observations, diagnosis, recommendations and treatment of the CAC Care Team with regard to Titus' health. I do not know whether or not Owner followed-up with respect to any of the recommendations regarding Titus care.

Sincerely,



Jason Eberhardt, D.V.M., M.S., DACVIM  
Director, Companion Animal Clinic



**ARIZONA STATE VETERINARY MEDICAL EXAMINING BOARD**

1740 W. ADAMS STREET, STE. 4600, PHOENIX, ARIZONA 85007

PHONE (602) 364-1-PET (1738) • FAX (602) 364-1039

VETBOARD.AZ.GOV

**INVESTIGATIVE COMMITTEE REPORT**

**TO:** Arizona State Veterinary Medical Examining Board

**FROM:** PM Investigative Committee: Donald Noah, D.V.M. - **Recused**  
Amrit Rai, D.V.M.  
Adam Almaraz – **Acting Chair**  
Christine Butkiewicz, D.V.M.  
William Hamilton

**STAFF PRESENT:** Tracy A. Riendeau, CVT – Investigations  
Michael Raine – Assistant Attorney General

**RE:** Case: 19-21  
Complainant(s): Maria Falcon and Family  
Respondent(s): Jason Eberhardt, DVM (License: 5043)

**SUMMARY:**

Complaint Received at Board Office: 9/12/18  
Committee Discussion: 12/4/18  
Board IIR: 1/16/19

**APPLICABLE STATUTES AND RULES:**

Laws as Amended April 2018  
(Green); Rules as Revised  
September 2013 (Yellow)

On June 19, 2018, "Titus," a 12-13-year-old male Yorkshire Terrier was presented to Midwestern University's Companion Animal Clinic for evaluation of a submandibular mass. Complainant's requested antibiotics but were advised that diagnostics needed to be performed. An aspiration of the mass was obtained as well as a blood sample for Valley Fever testing.

When the dog was returned to Complainants four hours later, he was lethargic and unable to walk. The dog was evaluated by a neurologist; the dog was later discharged to Complainants with antibiotics and instructions to monitor the dog – if no improvement, they should return for evaluation.

The dog returned the following day due to no improvement; monitoring at home was again recommended.

On June 27, 2018, the dog again returned due to no improvement. Treatments and diagnostics were recommended along with a referral to a cardiologist.

On July 10, 2018, the dog passed away.

Complainants expressed concern that the dog was mishandled during the aspiration



of the mass leading to the death of the dog.

**Complainants were noticed and appeared.**

**Respondent was noticed and appeared telephonically. Attorney Barbara McCloud was present telephonically. Attorney David Stoll was present.**

**The Committee reviewed medical records, testimony, and other documentation as described below:**

- Complainant(s) narrative: *Maria Falcon and Family*
- Respondent(s) narrative/medical record: *Jason Eberhardt, DVM*
- Consulting Veterinarian(s) narrative/medical record: *Midwestern University veterinarians – see other complaints.*

## **PROPOSED 'FINDINGS of FACT':**

1. On March 20, 2018, the dog was presented to Dr. Bennett and Student Doctors (SD) due to the regular veterinarian believing the dog had enlarged lymph nodes from dental disease. Complainants reported that the dog had Cushing's – they stopped the medications due to the dog's hair and the dog having diarrhea; dog now has normal baseline cortisol levels on last blood test. The dog had been on Clavamox to help with enlarged lymph nodes, which were better, but had been the size of golf balls. Complainants further reported that the dog had been panting at night, foul odor, difficulty breathing and increased thirst. The dog had no previous anesthetic complications but Complainants were concerned about anesthesia.

2. Complainants relayed that the dog had a stroke in 2013 and had an MRI; ate rocks a few years ago when first diagnosed with Cushing's – no surgery; dog was paralyzed for four (4) months due to some sort of disc problem and had an MRI.

3. It was noted that the dog had a weight = 5.9kg, a temperature = 100 degrees, a heart rate = 150bpm and a respiration rate = 60rpm; mucous membranes = pink, BCS = 5/9 and QAR. The dog was unstable when standing – 20% strength in front legs. There were skin issues, mature cataracts in both eyes, weakened femoral pulses bilaterally, grade 4 dental disease, abdominal distension and hepatomegaly, aural discharge, mild muscle wasting appreciated at the spine, weak thoracic limbs, normal proprioception, thin hair coat and pu/pd/panting at home per Complainants.

4. An ACTH stim test was recommended which Complainants elected to have done elsewhere, and ear cytology – which revealed 1+ yeast. Complainants were to schedule a dental with blood work and were to come in if there were any signs of infection prior to the dental (enlarged lymph nodes). Ear cleaner was dispensed.

5. Complainants reported that an ACTH stim test was performed elsewhere and the results were consistent with Cushing's; they will be starting back on Trilostane and rechecking levels. Complainants then reported that they took the dog off the medication due to the dog having diarrhea, not eating and trembling.

6. On May 4, 2018, blood work was performed.

7. On May 7, 2018, Dr. Bennett contacted Complainants to discuss the blood results in

anticipation of the upcoming dental visit. The blood work was good to move forward with the dental.

8. On May 10, 2018, the dog was presented to Dr. Bennett for a dental procedure. Complainants spoke with anesthesiologist, Dr. Hofmeister, who felt the dog was a good candidate for surgery based on the blood work and auscultation of the heart and lungs. He warned that all anesthetic procedures come with some risk however. The dog had a weight = 4.6kg, a temperature = 101.6 degrees, a heart rate = 110bpm and a respiration rate = panting. The dog appeared to be very weak in the exam room, reluctant to walk around and would only stand. Complainants relayed that the dog was quiet at home but would walk around and there had been front leg weakness and weight loss from the last visit. Dr. Hofmeister expressed concerns about the weight loss and that there could be an underlying process occurring that they could not see. He recommended following up with Dr. Bennett.

9. The dental was performed. The dog had extensive gingival recession, many mobile teeth, missing teeth, periodontal pockets and 15 teeth needed extracting. The procedure took twice as long as expected due to the dog's poor oral health. After the procedure, Complainants were contacted and were advised the dog could be discharged later that day. Complainants expressed concern about taking the dog home and being able to monitor his status during the night. Complainants were offered to keep the dog overnight, at no charge, for monitoring and they could pick up the dog the following day; Complainants agreed.

10. The following day, the dog was discharged to Complainants.

11. On May 17, 2018, the dog was presented to Dr. Keenan for a recheck. Complainants advised that the Clinidamycin was finished the previous evening and the dog was no longer on Trilostane for Cushing's. Upon exam, the dog had a weight = 4.97kg, a temperature = 101.2 degrees, a heart rate = 120bpm and a respiration rate = panting. The dog was noted as slightly underweight, abdominal distension, crepitus on palpation of stifles and hesitation and pain of extension of hips bilaterally – mild muscle atrophy in the hind end bilaterally. Findings were discussed with Complainants by the SD about pain and discomfort in the hind end; radiographs were discussed to look for changes however Complainants elected conservative treatment and start the dog on over the counter joint supplements. Complainants were to monitor for quality of life decrease due to pain and discomfort in the hind end.

12. On June 19, 2018, the dog was presented to Dr. Thomas for an enlarged mass – possible lymph node. Complainants stated in their complaint that the dog was walking, eating and functioning normally. They advised the SD that Clavamox seemed to reduce the swelling in his gland in the past. According to Complainant, they would not prescribe antibiotics and recommended aspirating the mass and testing for Valley Fever; Complainant reluctantly agreed.

13. According to the medical records, Complainants noted the swollen lymph node four days earlier, and this had been a problem in the past before the dental cleaning; the dog was not eating well and had a bad odor from his mouth. The dog was lethargic, wobbled when he walked and was urinating more. The dog was currently on Cosequin. Upon exam, the dog had a weight = 4.8kg, a temperature = 101.5 degrees, a heart rate = 120bpm and a respiration rate =

panting. The assessment of the dog was that he appeared mildly underweight, decreased appetite, liver disease, unmanaged Cushing's disease creating weight distribution, parasites, neoplasia and open. There was an enlarged left submandibular area – the rest of the lymph nodes palpated normal. Rule-outs were lymphoma, infection, hyper-reactive lymph node, salivary hyperplasia, reactive salivary gland, salivary mucocele, other neoplasia and open. Neuro deficits – age related, blindness related, right forebrain pathology, some are historical and open. History of back pain – IVDD, arthritis, Valley Fever, open. The dog had decreased CP in hind limbs, more on the right side.

14. Complainants agreed to the recommended fine needle aspirate and Valley Fever test reluctantly; they were told that it would only take a few minutes. The fine needle aspirate was attempted by the SD which resulted in an insufficient sample for assessment therefore Dr. Thomas performed another aspiration which did result in a sufficient sample for analysis – the dog was muzzled for the aspirations. The dog urinated on the exam table which was also collected for testing. After the aspiration, the dog became lethargic and was allowed to rest in the kennel. Complainants were not advised of the reason for the delay and grew increasingly concerned. The dog was later brought back to Complainants.

15. According to Complainants, the dog was returned to them 4 hours later; the dog was placed on the floor, he was unable to stand and his back legs crossed buckled behind him. Dr. Thomas entered the exam room and examined the dog. She felt the dog could be showing neurologic signs and asked Complainants if she could take the dog into the back to have a courtesy exam by Dr. Evans, the neurologist.

16. Dr. Evans noted the dog was quiet, mentally subdued but responsive. Slowly ambulatory with moderate truncal ataxia with tendency to turn to the right and moderate right head turn. Absent CP left hind with remainder of postural reactions intact. There was mild reaction on cervical manipulation/palpation; subjective reaction to palpation along multiple TL spine – collapsed under pressure – rule out pain vs mental state. Over the next 30 minutes the dog gradually but steadily improved. The tendency to turn to the right and right head turn was nearly resolved and the dog was walking with much more speed and determination though still mildly ataxic.

17. The differential diagnosis was stressed induced reveal of underlying intracranial pathology – neoplasia, hydrocephalus vs stress unmasking underlying age related or congenital changes – hydrocephalus, cortical atrophy, previous vascular event, metabolic encephalopathy; active vascular event; postural deficits – chronic IVDD. Recommendations were blood pressure, time for continued recovery as has significant improvement in a few minutes, follow up for presenting concerns, may consider MR brain scan.

18. The dog recovered to the condition he was in at presentation and was discharged with Clavamox; Tramadol declined by Complainants.

19. The blood and urine changes were consistent with a patient that was not being treated for Cushing's disease. The plan was start the dog on a liver protectant. The fine needle aspiration was consistent with aspiration of a salivary gland; sialoceles with mixed inflammation and evidence of chronic and active hemorrhage.

20. The following day the dog was presented to Dr. Bennett due to the inability to walk the previous evening or that morning. Complainants expressed concerns that something happened to the dog while in the treatment area the previous day. Upon exam, the dog had a weight = 4.85kg, a temperature = 102 degrees, a heart rate = 120bpm and a respiration rate = panting; BAR. Previous chronic conditions remained but the left submandibular swelling had decreased. Once the dog was placed on a leash and placed on the ground, he was ambulatory on all four limbs. He continued to display generalized muscle atrophy, crepitus on manipulation of his hips and stifle bilaterally, and intermittent unsteadiness while standing. The dog's CP was decreased in both hind limbs and did not appear to be in pain. He did wince on palpation of thoracolumbar spine and hip the previous day but was not appreciated at this exam.

21. Dr. Evans was present and also observed the dog standing and walking. He indicated that the dog had shown improvement from the prior day, with even less turn to the right.

22. Dr. Bennett and the SD discussed the findings with Complainants and recommended radiographs. Complainant declined in attempt to minimize the dog's stress. Dr. Bennett recommended bringing the dog in for radiographs if signs recur. She explained that older dogs can be stressed by procedures and can exhibit certain signs and behaviors as a result therefore it was recommended that the dog rest and recover. Liver protectants were recommended for the increased liver enzymes and a joint supplement and pain medication for the hind end arthritis.

23. On June 27, 2018, due to no improvement, the dog was presented to Dr. Thomas. Complainants reported that the dog could not stand without support; he was hand fed roast beef that morning. Upon exam, the dog had a weight = 4.9kg, a temperature – not obtained, a heart rate = 120bpm and a respiration rate = panting. Again all the chronic conditions remained unchanged. Dr. Thomas noted that the dog was ambulatory on all four limbs once a leash was put on and the dog was placed on the ground. The dog was taken into the back for Dr. Evans to evaluate.

24. Dr. Evans exam noted that the dog was quiet, mentally subdued but responsive. He was ambulatory with a slow gait without overt tendency to turn in one direction over another and initially without overt ataxia. With increased activity a progressively mild to moderate symmetrical ataxia and standing truncal sway developed. This exercise intolerance was accompanied by an increased respiratory effort – the ataxia and respiratory effort improved in a few minutes with rest. The dog's spinal reflexes were normal on all four limbs as was his postural reactions and CP deficits. There was mild lameness to the right rear limb and thickening of right stifle with positive cranial drawer. Dr. Evans's assessment was:

- a. Brain – consider exacerbation of subclinical underlying pathology or underlying age related changes from emerging systemic disorder.
- b. Spinal – Chronic disk disease, age related changes, previous vascular event, active spinal disease, some degree of mild to moderate or even multiple chronic disk protrusions. Even mild spinal cord changes could be exacerbated by underlying intracranial disease and/or some other emerging systemic disorder. However, the previously reported spinal cord changes were improved that day.
- c. Systemic disease – cardiovascular/pulmonary disorder, hyperadrenocorticism or other metabolic disorder.

- d. Right cranial cruciate rupture – chronic.
- e. Prognosis – guarded pending diagnosis.

25. Recommendations for the neurologic exam included thoracic radiographs, consultation with a cardiologist, restricted activity, tramadol; advanced imaging could be considered but would first get an evaluation from a cardiologist.

26. Dr. Thomas and the SD went over the findings with Complainants. Based upon the arthritis diagnosis, a complimentary cold laser therapy of the hips and stifles was recommended – Complainants consented. The dog was discharged with detailed instructions highlighting the most concerning issues could be attributed to an underlying cardiovascular issue and further assessment was recommended. A cardiology consult was recommended and information was provided to Complainants with various provider and location options. Tramadol was dispensed and recommendations to limit stress and activity were given.

27. The following day, Dr. Thomas contacted Complainants to check on the dog. The dog had been walking around but was currently laying down – he was taking his prescribed medication. The ACL was discussed regarding it possibly causing rear end pain, testing was recommended but declined.

28. On July 10, 2018, the dog passed away.

29. On July 13, 2018, Complainants met with Dr. Eberhardt to go over their concern with the dog's June 19, 2018 appointment. The dog was never the same after that appointment and Complainants were convinced that something happened to the dog during that appointment. Dr. Eberhardt offered his condolences and agreed that the communication could have been better during that time. He committed to looking into the matter a getting back to Complainants in a couple weeks.

30. Dr. Eberhardt spoke with SD Alexis Kersting due to Complainants stating she did not act in a caring way. SD Kersting reached out to Complainants to address their concerns – also she had heard about the dog passing and wanted to express her condolences. Complainants were upset that SD Kersting reached out to them.

31. Dr. Eberhardt again spoke with Complainants who requested a detailed analysis of what happened during the four hour visit on June 19<sup>th</sup>. Dr. Eberhardt reiterated that they should have been better informed during the visit and would speak to faculty and staff on keeping owners better informed. Complainants were not satisfied with this therefore Dr. Eberhardt gave them the contact information for the University Dean (Dean Graves was out of leave therefore Associate Dean Gartrell was available).

32. On August 10, 2018, Associate Dean Dr. Gartrell and Assistant Dean Patterson met with Complainants for several hours to discuss the dog's care on June 19<sup>th</sup> and went over the questions presented by Complainants. Dr. Gartrell apologized for not timely communicating during the June 19<sup>th</sup> visit and she had already begun to put in place better protocols to ensure delayed communications did not occur again. Complainants wanted to know what kind of disciplinary action would be taken against personnel involved in the care. Dr. Gartrell explained

that the clinic is a part of the University and is therefore a teaching facility and reminded Complainants that the nature of the clinic was explained to them when they first brought the dog in as a patient. She further stated that she understood their frustration but the dog's care was explained in detail and there was no new information to share. The dog was an older dog with significant medical issues and without a necropsy, there was not any way to determine whether or not the dog's death was connected in any way to the care he received through the clinic.

33. Complainants were still not satisfied and on August 27, 2018 Dr. Gartrell spoke with them regarding their concerns. Complainants wanted the SD and clinicians involved in the case dismissed and terminated – which Dr. Gartrell advised would not occur. They then wanted a written summary from every person that touched the dog during that and subsequent visits and a written response to her questions that had been emailed to Dean Graves. Dr. Gartrell agreed to speak with Dr. Eberhardt, clinicians and the SD and re-review the medical records.

34. After review, Dr. Gartrell felt there was no new information to provide Complainants; she noted that she had already answered Complainants questions and obtaining written statements would be duplicative of what was already in the medical records. Dr. Gartrell emailed this information to Complainants and refunded their money due to their dissatisfaction of the care and treatment provided to the dog.

#### **COMMITTEE DISCUSSION:**

The Committee discussed that Dr. Eberhardt did not see the dog.

#### **COMMITTEE'S PROPOSED CONCLUSIONS of LAW:**

The Committee concluded that no violations of the *Veterinary Practice Act* occurred.

#### **COMMITTEE'S RECOMMENDED DISPOSITION:**

**Motion:** It was moved and seconded the Board:

*Dismiss this issue with no violation.*

**Vote:** The motion was approved with a vote of 4 to 1, with Dr. Noah recused.

*The information contained in this report was obtained from the case file, which includes the complaint, the respondent's response, any consulting veterinarian or witness input, and any other sources used to gather information for the investigation.*



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Tracy A. Riendeau, CVT  
Investigative Division